IN THE HIGH COURT OF BOMBAY AT GOA
****

FIRST APPEAL NO.40 OF 2002

Station Superintendent,
Inter State Police Wireless,
Transmitting Station,
Panaji. ... Appellant

Versus

Comunidade of Bambolim,
Through its Attorney
with his office at post
Curca Bambolim, Goa. ... Respondent.

Mr. V. P.Thali, advocate for the appellant.

Mr. A. R. Kantak, advocate for the respondent.

CORAM : B. H. MARLAPALLE &
N. A. BRITTO, JJ.

DATE : 13th September, 2004.

ORAL JUDGMENT (Per Marlapalle, J.)

This is an appeal filed under Section 54 of the Land Acquisition Act, 1894, challenging the Award passed in Land Acquisition Case No.36/93 by the learned District Judge at Panaji on 17th September, 2001. By the said Award, the learned District Judge at Panaji was pleased to enhance the compensation from Rs.43/- per sq. mt. to Rs.170/- per sq. mt.

2. The Government of Goa published the Notification under Section 4 of the Land Acquisition Act, 1894 ("the Act" for short) on 22nd January, 1991 and acquired a total of 10,117 sq. mts. from survey no.92/1 (part) situated at Village Bambolim in Tiswadi Taluka of Goa, for construction of I.S.P.W. Transmitting Station and Staff Quarters. The

Land Acquisition Officer had fixed the compensation rate at Rs.43/- per sq. mt. and being dis-satisfied with the same an application for enhancement was moved, claiming the compensation at Rs.300/- per sq. mt. Reference was made to the District Court under Section 18 of the Act for considering the demand for enhancement. The claimant examined six witnesses, whereas the State examined only one witness. A.W.3, Rui Ribeiro Santana, was examined as an expert witness whereas A.W.1, Mr. Jerone Monteiro, was examined on behalf of the claimant as special attorney. The applicant relied upon the Award dated 24th March, 1981 at Exh.A.W.3/B in Land Acquisition Case No. 38/93 and also the Award in Land Acquisition Case No.30/88 at Exh.A.W.1/C. The first Award was placed on record through the evidence of A.W.4, Mr. V. L. Patel, whereas the second Award was placed on record through the evidence of A.W.1, Mr. Jerone Monteiro. The learned District Judge also considered the document at Exh. A.W.3/C and accepted the Awards at Exh.A.W.1/C and A.W.3/C as being comparable for fixing the market value and, accordingly, the market value at Rs.170/- per sq. mt. was fixed. The learned District Judge was of the view that if the market value of the land acquired as on 2nd June, 1988 was fixed at Rs.150/- per sq. mt., some increase was required to be given for the subject land, which was acquired by Notification dated 21st March, 1991 and, therefore, he was pleased to increase the market rate by Rs.20/- thus fixing it at Rs.170/- per sq.mt.

3. Mr. Thali, learned advocate for the appellant (acquiring body) has challenged the Award and submitted that the reliance placed on the Awards at Exh.A.W.1/C and A.W.3/C was patently erroneous mainly because the issues which were germane to the determination of the market value were not raised in those Awards and, therefore, were not considered. These issues were regarding the disability in determining the market value on account of the fact that the subject land belonging to the Comunidade could not have been sold to a builder/developer for construction of residential buildings, or for that matter, even no private individual could have been sold those lands for construction of residential dwellings. He further pointed out that there were tenants on the subject land and the compensation amount awarded by the Land Acquisition Officer has been deposited with the Reference Court as is clear from the notice dated 24th February, 1993 (Exh.P.W.1/E), in the name of the appellant as well as Shri Rama Vithal Gawas. The third challenge is on the ground of failure to consider the deduction for development of the land. It was urged that the deduction of 50% ought to have been considered by the learned District Judge, more so when as per the Panchayat Regulations 30% of the land is required to be utilized for leaving open spaces, construction of roads and drainage, etc. In addition, Mr. Thali placed on record copies of the subsequent Awards passed by the 1st Additional District Judge at Panaji in Land Acquisition Case No.45/99 and Land Acquisition Case no.65/99.

By both these Awards, the reference for enhancement came to be rejected by the learned 1st Additional District Judge. The land was acquired by the State Government vide Notification under Section 4 of the Act having been published in the Official Gazette on 24th October, 1996, and admeasuring total area of 4050 sq. mts. from survey no.92/1(Part) of Bambolim Village, the Award was passed by the Land Acquisition Officer on 31st July, 1997, by fixing the market value at Rs.25/- per sq. mt. Thus, the land acquired and covered in Land Acquisition Case No.45/99 and Land Acquisition Case No.65/99 is from the same survey number as the subject land in this appeal. The first reference was at the instance of the tenants, whereas the second reference was at the instance of the present respondent i.e. Comunidade of Bambolim. Mr. Thali submitted that the disabilities considered by the learned 1st Additional District Judge in rejecting the references are squarely applicable in the Award impugned in this Appeal and even if they were not raised and considered, it was necessary that those disabilities are taken into consideration for determining the correct market value of the subject land and in any case, Rs.170/- per sq. mt. could not be the correct market value.

4. Mr A. R. Kantak, learned counsel for the respondent Comunidade of Bambolim has, at the first instance, opposed reliance on the Awards passed in Land Acquisition

Cases No.45/99 and 65/99, by relying upon the decision in the case of **Pal Singh & Ors. vs. Union Territory of Chandigarh,** AIR 1993 S.C. 225. He further submitted that the disabilities pointed out by the appellant could not be relevant and in any case they were not raised before the Reference Court. It was submitted that the tenancy was not in respect of cultivation of land, but it was only, at the most, for harvesting the fruits. It was further pointed out that there was and in fact there is no embargo on alienation of the land of Comunidades for construction of residential dwellings. It was admitted that the issue regarding tenancy on the subject land has been referred and is pending presently before the first Joint Mamlatdar at Panaji and it is at the evidence stage. Number of decisions have been relied upon by the learned respective counsel in support of their contentions.

5. Article 5 of the Code of Comunidades states that the Comunidades are under the administrative tutelage of the State. According to rules contained in the Code, their lands may be given on long lease or transferred in the form established in the Code. As per Article 153(9) the Governor General has the power to grant letting by leases (aforamentos), to authorize the exchange of lands of the Comunidades and determine its reversion. Article 30(4) (f) states that the Comunidade has the powers to decide over long leases, sale or exchange of lands. Mr. Kantak relied upon

this provision and submitted that there is no blanket ban on the exchange of land by way of sale and, therefore, there is no such disability on the marketing title as was contended by the appellant. In this regard as noted earlier, Article 5 of the Code states that the lands of the Comunidade may be given on long lease or transferred in the form established in the Code. Thus, all the transfers whether by way of lease or sale, will have to be considered in keeping with the provisions of the Code and not dehors the Code. Chapter VIII of the Code is regarding the insolvent Comunidade and the scheme of the said Chapter indicates that when the Comunidades are declared insolvent, there is a provision to dispose of the land by way of sale and Article 180 reads thus:-

> **"Art.180.**
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> When the work referred to in the preceding Art. is over, sale of lands and other sources shall be announced, the auction being held under the rules contained in the Civil Procedure Code, in the relevant part."

The price of the land for auction is contained in "tombo 1" book and to its price shall be added twenty annuities of variable and invariable expenses, referred to in the same "tombo", and the price of the other returns shall be the sum of twenty annuities or instalments. The lands are required to be auctioned free of charge and only those lands and returns shall be sold where price assessed in the auction, is sufficient to redeem the expenses contained in

the list referred to in the 3rd paragraph of Art.179. As per Article 532 the contracts book shall be used for the registration of the contracts of lease and sale of lands of works services and agreements and any other that the board may enter into.

6. A Division Bench of this Court in the case of **Shri Michael Charles D'Souza vs. Shri Ganesh V. V. Gaonkar & Ors.,** 1995 (2) Goa L.T. 367, considered the scheme of the Code and held that Article 39 (4) (j) of the Code could be invoked by the State Government to grant the land of the Comunidade in public interest for the following categories:-

(a) Public and Religious Institutions;

(b) Houses to economically weak sections and Scheduled Caste;

(c) Industrial use;

(d) Grant to the Government Departments and Local Bodies; and

(e) Housing for Government Servants and employees of the Comunidades.

7. On assessment of the provisions of the Code, we have no doubt in our mind that the land belonging to the Comunidades is not a free-hold land which could be sold in the open market to private parties and its transfer is permissible by way of lease/perpetual lease as the case may be. At the same time, the State Government has powers under Article 39 of the Code to grant lease land for the

above-mentioned purposes. Mr. Kantak, is right in his contention that the subsequent Awards fixing the compensation rate or denying any enhancement, cannot be relied upon. However, we are not relying upon these Awards by way of evidence and we consider these Awards only for the limited purpose and deciding the legal issues. In Land Acquisition Case Nos.45/99 and 65/99 specific issues regarding the handicaps on the marketability of the land from survey no.92/1(Part) of village Bambolim was considered by the Reference Court. In addition the issue regarding the tenancy coming in the way of disposal of the land was also considered and held against the claimants. It is true that both these issues do not appear to have been taken before the Reference Court in the instant case and they were also not so taken in the cases relied upon by the learned District Judge, i.e. Awards at Exh.A.W.1/C and Exh.A.W.3/C. Nevertheless these are very relevant issues in deciding the market value of the subject land and even if they have been raised for the first time in this Appeal, we are required to consider the same, in view of Sec.23 of the Act.

8. There is no dispute that the issue of tenancy is pending for adjudication before the Mamlatdar's Court as at present and if the same is decided against the present respondent, then there is further disability on account of marketability of the subject land in view of the provisions of Section 18 (k) of the Goa, Daman and Diu Agricultural

Tenancy Act, 1964.

9. The acquired land admeasures 10,117 sq. mts. and the purpose of acquisition was for construction of I.S.P.W. transmitting Station and Staff Quarters at Bambolim. The learned District Judge did not consider the issue of deduction. It was contended by Mr. Kantak that the Reference Court did not commit any error in this regard inasmuch in the Awards relied upon and filed at Exh.A.W.1/C and A.W.3/C, there was no such deduction. It is pertinent to note that the lands acquired and which were the subject-matter in these two Awards at Exh.A.W.1/C and Exh.A.W.3/C were for widening of roads and, therefore, the issue of deductions for development or open spaces was perhaps not considered. These Awards cannot be relied upon to hold that no deduction is required to be considered in the subject land. It is well-established that whenever a large patch of agricultural land is acquired for construction of offices/residential dwellings, deductions varying from 30 to 50% are required to be made depending on the location, the development and the municipal and other local Self-Government body rules. Even if the State had not raised this issue of deductions, it was necessary for the Reference Court to give due regard to the Rules framed by the Village Panchayat so as to deduct certain portion for determining the compensation amount payable and ofcourse for fixing the market price.

10. Though the impugned Award has not considered the above-mentioned relevant factors, that itself would not imply that the claimants were not entitled for enhancement of compensation over and above the compensation granted by the Land Acquisition Officer, i.e Rs.43/- per sq.mt. However, the Reference Court will have to consider the handicaps/disabilities in marketability of the subject land and also the issue of deductions and then decide the market value. The Full Bench of this Court in the case of **State of Maharashtra vs. Govindrao Narayanrao Ghorpade,** AIR 1985 Bom.336, by referring to the following observations of the Gujarat High Court in the case of **Spl. L.A.Officer vs. Sushilaben,** reported in AIR 1972 Guj.189, stated that on principles it makes no difference whether there is a mere restriction on alienation or whether that restriction can be relaxed on payment of any amount and observed:-

> "The value of property to its owner inter alia depends on two key factors - (1) the right to alienate and to obtain the money equivalent of the property (2) its outcome. It does not depend merely on the income. If on sale of the property it would fetch less than the property of a similar nature on account of some statutory restriction, the value of the property to the owner cannot be the same."

Our Full Bench further stated thus:-

> "However, we would like to make it clear that the compensation of a property with such restiction cannot be determined on a comparison of the value of a property to which no such resriction is attached. The restriction would undoubtedly reduce the market value. The

extent of reduction will depend upon the facts of each case."

11. We are not equipped to undertake the same exercise and it would be proper that the same is done by the Reference Court. At the same time, we are aware that the issue of tenancy is pending before the Mamlatdar's Court and it is required to be decided by the said authority within a fixed period. The reliance of the Reference Court on the Awards at Exh.A.W.1/C and A.W.3/C was not proper inasmuch as the factors of tenancy and bar on sale were not duly considered and we make it also clear that we have not adjudicated the correctness of the Awards passed in Land Acquisition Cases no.45/99 and 65/99. We have relied upon these Awards for the limited purpose that in respect of the land from the same survey number, the Reference Court has rejected the references by considering that there is a tenancy on the subject land and the land cannot be tranferred by way of sale. These issues are required to be decided afresh by the Court below in the instant case and after giving opportunity to the respective parties to place on record the evidence, if any.

12. We therefore allow this Appeal partly. We quash and set aside the impugned Award dated 17th September, 2001 in Land Acquisition Case NO.36/93 and remand the reference for fresh adjudication to the learned District Judge. We direct the 1st Joint Mamlatdar, Panaji, to decide the pending reference regarding tenancy as per law and as

expeditiously as possible, but in any case within a period of three months from today. The learned District Judge will also decide the reference afresh within six months from today, after hearing the parties concerned.

13. A copy of this order be forwarded to the 1st Joint Mamlatdar alongwith the writ, to the court below.

B. H. MARLAPALLE, J.

N. A. BRITTO, J.

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